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UNITED STATES DISTRICT COURT

District of Montana

Butte Division

Montana Fair Housing, Inc.,)	
)	
Plaintiff,)	Case No. _____
versus)	
)	
Overlook Condominiums, L.L.C.,)	COMPLAINT
Overlook Condominium Development,)	
L.P., John Does 1-3, Overlook Place)	
Condominium Unit Owners)	
Association, Inc., and Yellowstone)	
Heritage Construction,)	
)	
Defendants.)	

COMPLAINT

1. This action is brought by the Plaintiff, Montana Fair Housing, Inc. (MFH), a

nonprofit Montana corporation, on its own behalf and to secure equal housing opportunities for persons without regard to disability as guaranteed by the Federal Fair Housing Act as Amended in 1988 (FHA) and the fair housing provisions of the Montana Human Rights Act (HRA). MFH brings this action against the Defendants for violations of accessibility design and construction requirements set forth in 42 USC §3604(f) and Section 49-2-305(5) of the HRA.

2. Plaintiff seeks declaratory, injunctive and affirmative relief to remedy the past violations of the above referenced nondiscrimination laws, to prevent future violations of those laws, and to require performance of the Defendants of their respective affirmative obligations under those laws. Plaintiff also seeks damages as permitted by law.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action under 28 U.S.C. §§1343 and 1331, and 42 U.S.C. § 3613, among other federal laws. The Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over those claims under state laws arising from the same core of operative facts.
4. Real properties which are the subject of this civil action are located in Gallatin County, Montana. One or more of the actions and omissions by

Defendants alleged to be in violation of the above referenced federal and state laws occurred in Gallatin County, Montana. Venue is proper under 28 U.S.C. § 1391.

SUBJECT PROPERTIES

5. This Complaint concerns or relates, in part, to the real properties (h/a referred to as the “Overlook Properties”) known as the Overlook Condominiums located on 700/720 Haggerty Lane in Bozeman, Montana. The legal description of the Overlook Properties is OVERLOOK PLACE CONDO, S08, T02 S, R06 E, MINOR SUB 375 TRACT 1 CONDO MASTER.
6. The Overlook Properties are “dwellings” as that term is defined in the federal Fair Housing Act, 42 U.S.C. §§3601 et seq., and are “housing accommodations” as that term is defined in the Montana Human Rights Act, Mont. Code Ann. Title 49. The Overlook Properties contain “covered multifamily” dwellings and housing accommodations as those terms are defined under federal and state fair housing laws.

PARTIES

7. Plaintiff Montana Fair Housing, Inc.:
 - a. MFH is a nonprofit Montana corporation organized under the laws of

Montana with its principal place of business located at Butte, Montana.

- b. Among the MFH specific purposes and goals is the promotion of equal opportunity in the renting of housing and elimination of all forms of illegal housing discrimination in the state of Montana. To this end, MFH engages in activities that include but are not limited to the following: (1) counseling persons in need of housing regarding their right to equal housing opportunities and the location of housing available on a nondiscriminatory basis that is accessible to persons with disabilities; (2) investigating allegations of discrimination and conducting investigations of housing facilities to determine whether housing is available on an equal opportunity basis; (3) taking such steps as it deems necessary to assure such equal opportunity and to counteract and eliminate discriminatory housing practices; (4) providing outreach and education to the community and housing providers and consumers regarding fair housing; (5) identifying housing that is available in various housing markets of Montana which is available for sale or rent on a nondiscriminatory basis and distributing that information to various organizations, agencies and

persons seeking nondiscriminatory and accessible housing; and (6) identifying, providing information to and training housing providers and developers and builders that are engaged in the design and construction of covered multifamily dwellings and housing accommodations.

- c. MFH brings this action on its own behalf and for its staff, officers, and constituents who seek nondiscriminatory and accessible housing or who associate with persons seeking nondiscriminatory and accessible housing.

8. Defendants:

- a. Defendant Overlook Condominiums, LLC, and/or Defendant Overlook Condominiums Development, LP, are the entities and persons who owned and directed or directly participated in the development, design and construction of the Overlook Properties that are the subject of this lawsuit. Said Defendants have or had the rights to sell, lease or rent the Overlook Properties.
- b. Defendants John Does 1-3 are the individuals who personally made decisions regarding the design and construction of the Overlook Properties and are currently unknown to the Plaintiff;

- c. Defendant Yellowstone Heritage Construction was the builder and contractor and subcontractor responsible for the construction of the Overlook Properties;
- d. Defendant Overlook Place Condominium Unit Owners Association, Inc., is the entity currently responsible for and exercises exclusive or partial control over the Overlook Properties and is an essential party to this case for purposes of correcting or remediating any violations at of the design and construction accessibility requirements under federal and state fair housing laws at the Overlook Properties.

EVENTS

- 9. Prior to, during and after August 2011, MFH has been engaged in identifying dwellings and housing accommodations that are available on an equal opportunity basis and are accessible to persons with disabilities.¹ To that end, MFH has requested and reviewed building permits and ordinances and certificates of occupancy, has reviewed residential properties under development, has reviewed city ordinances, has sent information to and been available to provide information to local governmental agencies and

¹ For purposes of this civil action, the term “disability” as defined under state fair housing law means “handicap” as defined under federal fair housing law.

residential property owners and other persons involved in the development of housing (including covered multifamily units) advising them of the requirements under federal and state fair housing laws, and has counseled persons seeking accessible housing opportunities in Bozeman and other cities across the state.

**UNLAWFUL DISCRIMINATION AGAINST PERSONS WITH
DISABILITIES AT THE OVERLOOK PROPERTIES**

10. As part of its equal housing efforts, MFH surveys and identifies residential properties in Bozeman and elsewhere that are accessible to persons with disabilities and also identifies residential properties that are not accessible and do not comply with the accessibility design and construction requirements of state and federal fair housing laws.
11. On or about 2007, Overlook Condominiums, LLC, applied for and received from the City of Bozeman building permits to design, build and construct the Overlook Properties, identifying Yellowstone Heritage Construction as the contractor and subcontractor for that purpose.
12. The City of Bozeman issued certificates of occupancy for the Overlook Properties on March 9 and March 16, 2010.
13. Defendants Overlook Condominiums, LLC, and Overlook Condominium

Development, LP, and John Does 1-3 and Yellowstone Heritage

Construction designed and constructed the Overlook Properties in a manner that failed to comply with the design and construction requirements of the FHA, 42 U.S.C. §3604(f) or with the design and construction requirements of the HRA, §49-2-305(5), M.C.A., in that the Overlook Properties:

- a. Do not provide at least one accessible building entrance on an accessible route to the covered multifamily units and
- b. Do not make the public use and common use portions of the covered multifamily units readily accessible to and usable by a person with a disability.

14. On information and belief, MFH further alleges that Defendants Overlook Condominiums, LLC, and Overlook Condominium Development, LP, and John Does 1-3 and Yellowstone Heritage Construction designed and constructed the Overlook Properties in a manner that failed to comply with the design and construction requirements of the FHA, 42 U.S.C. §3604(f) or with the design and construction requirements of the HRA, §49-2-305(5), M.C.A., in that the Overlook Properties:

- a. Do not provide doors designed to allow passage into and within all premises of the covered multifamily units to allow passage by a

person with a disability who uses a wheelchair; and

- b. Do not ensure that all premises within the covered multifamily units contain (I) an accessible route into and through the housing accommodation; (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (III) reinforcements in bathroom walls to allow later installation of grab bars; and (IV) usable kitchens and bathrooms that allow an individual who uses a wheelchair to maneuver about the space.
15. On or about August 2011, MFH went to the Overlook Properties to determine, from visual inspection, whether those properties appeared to comply with the accessibility requirements of federal and state fair housing laws. MFH did so for purposes of including the Overlook Properties on its list of residential properties that should be available on an equal opportunity basis for distribution to groups and persons seeking nondiscriminatory housing. As a result of the visual inspection, MFH determined that the exterior of the Overlook Properties did not comply with fair housing accessibility requirements and could not be identified as dwellings or housing accommodations available on a nondiscriminatory basis.
16. Subsequent to August 2011, MFH determined that a homeowners

association has been established for the Overlook Properties, i.e., the Overlook Place Condominium Unit Owners Association, Inc. MFH understands and believes and that said home owners association exercises exclusive or partial control over the Overlook Properties to the extent that any remedial or corrective actions that may be ordered in this case to rectify violations of federal and/or state fair housing laws requires the participation and/or consent of said home owners association.

17. To date, none of the Defendants has taken action to rectify, correct or remediate the conditions at the Overlook Properties which violate and do not comply with the design and construction requirements of the FHA or HRA as described above.

Injury and Harm, Pecuniary and Otherwise, to MFH

18. As a direct and proximate result of the acts and omissions of the Defendants described above, MFH has sustained economic losses, diversion of its resources from its program to promote and counsel and educate about equal housing opportunities, had its informational programs regarding equal housing opportunities impaired and diluted, sustained frustration of its organizational purposes and sustained other injuries.
19. As a direct and proximate result of the acts and omissions of the

Defendants, the Overlook Properties are not and will not be available on an equal opportunity basis to persons with disabilities, including persons who seek counseling from MFH, persons and agencies who seek information from MFH about nondiscriminatory housing in Bozeman, and other persons who are constituents of MFH.

20. The allegations set forth in Paragraphs 1-19 above are reincorporated in the following Counts I and II.

COUNT I

Federal Fair Housing Act Violations

21. Defendants Overlook Condominiums, LLC, and Overlook Condominium Development, LP, and John Does 1-3 and Yellowstone Heritage Construction designed, constructed and operated the Overlook Properties in violation of 42 U.S.C. §3604(f).
22. MFH is entitled to an award of equitable relief against all Defendants as permitted by law sufficient to rectify the conditions at the Overlook Properties that violate the provisions of 42 U.S.C. §3604(f).
23. MFH is entitled to an award of damages as permitted by law sufficient to rectify the harm to MFH, pecuniary and otherwise, resulting from the discriminatory acts of the Defendants Overlook Condominiums, LLC, and

Overlook Condominium Development, LP, and John Does 1-3 and Yellowstone Heritage Construction and to deter said Defendants and similarly situated others from engaging in similar violations of federal fair housing laws in the future.

COUNT II

State Human Rights Act Violations

24. Defendants Overlook Condominiums, LLC, and Overlook Condominium Development, LP, and John Does 1-3 and Yellowstone Heritage Construction designed, constructed and operated the Overlook Properties in violation of §49-2-305(5), M.C.A.
25. MFH is entitled to an award of equitable relief against all Defendants as permitted by law sufficient to rectify the conditions at the Overlook Properties that violate the provisions of §49-2-305, M.C.A.
26. MFH is entitled to an award of damages as permitted by law sufficient to rectify the harm to MFH, pecuniary and otherwise, resulting from the discriminatory acts of the Defendants Overlook Condominiums, LLC, and Overlook Condominium Development, LP, and John Does 1-3 and Yellowstone Heritage Construction.

WHEREFORE, Plaintiff requests judgment in its favor and against each of the

Defendants as set forth above and further requests that the Court:

- A. Declare that the Defendants Overlook Condominiums, LLC, and/or Overlook Condominium Development, L.P., and/or John Does 1-3 and/or Yellowstone Heritage Construction designed and constructed and operated the Overlook Properties in a manner that violates the accessibility requirements of federal and state fair housing laws;
- B. Enjoin each of the Defendants from continuing in their failure to take action to correct or rectify or remediate the deficiencies at the Overlook Properties that violate the accessibility requirements of federal and state fair housing laws and further enjoin said Defendants from failing to design or construct any future dwellings or housing accommodations in a manner that complies with federal and state fair housing laws;
- C. Order the Defendants to take such affirmative steps, including retrofitting the dwellings and housing accommodations and common use areas at the Overlook Properties, sufficient to bring the Overlook Properties into compliance with the accessibility requirements of federal and state fair housing laws and do so at the earliest date practicable;
- D. Award damages as permitted by law against the Defendants, except the Overlook home owners association, in amounts that are sufficient to rectify

the harm, pecuniary or otherwise, done to MFH as a result of the unlawful acts of the Defendants and each of them;

- E. Award punitive damages as permitted by law against each of the Defendants, except the Overlook Properties home owners association, in amounts sufficient to deter said Defendants and similarly situated others from engaging in similar unlawful acts in the future;
- F. Order the Defendants and each of them to pay the Plaintiff its costs, including reasonable attorney fees, for prosecuting this action as determined in an appropriate post-judgment proceeding;
- G. Grant such other relief as the Court deems fair and equitable.

Signed this 7th day of March, 2012.

/s/ Timothy C. Kelly

Timothy C. Kelly, Attorney for Plaintiff Montana Fair Housing, Inc.